1988

Utah Power and Light Company, a corporation v. City of Logan, a municipal corporation : Brief of Respondent

Utah Supreme Court

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Sidney G. Baucom; Samual F. Chamberlain; Utah Power and Light Co.; W. Cullen Battle, Douglas J. Payne; Fabian and Clendenin; Attorneys for Defendant.

UTAH SUPREME COURT

BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH POWER & LIGHT COMPANY, A Corporation, Defendant and Appellant, vs. CITY OF LOGAN, A Municipal Corporation, Plaintiff and Respondent.	:	BRIEF OF RESPONDENT Case No. 880411

On Appeal From A Judgment And Order Entered By Judge VeNoy Christofferson In The First Judicial District Court For Cache County, Utah

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TABLE OF AUTHORITIES

STATEMENT OF JURISDICTION

The Utah Supreme Court has jurisdiction to hear this appeal pursuant to Utah Code Ann. Section 78-2-2(3)(j) (Supp. 1988).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Does Utah Code Section 10-2-424 require that a municipality as a condition of serving customers annexed and within its municipal boundaries, pay to U.P.& L. a pro rata percentage of its company wide facilities without getting legal ownership to anything?

2. Does Section 10-2-424 prohibit municipalities from serving customers in annexed areas until they pay U.P.& L.'s price regardless of whether such price is so high as to be economically unfeasible?

3. Does Section 10-2-424 require compensation to U.P.& L. for its facilities and customers as if a municipality were condemning a portion of its business?

4. If Section 10-2-424 is interpreted so as to require annexing municipalities to pay U.P.& L. such a high rate for its facilities that it would be economically unfeasible for the municipality to serve the annexed customers, is said Section then in violation of Utah Constitution, Article XII, Section 8?

CONSTITUTIONAL PROVISIONS AND STATUTES

Utah Code Ann. Section 10-2-401:

> The Legislature hereby declares that it is legislative policy that:
> (1) Sound urban development is essential to the continued economic development of this state;
> (2) Municipalities are created to provide urban governmental services essential for sound urban development

and for the protection of public health, safety and welfare in residential, commercial and industrial areas, and in areas under going development;

(3) Municipal boundaries should be extended, in accordance with specific standards, to include areas where a high quality of urban governmental protection of public health, safety and welfare and to avoid the inequities of double taxation and the proliferation of special service districts;

(4) Areas annexed to municipalities in accordance with appropriate standards should receive the services provided by the annexing municipality, subject to Section 10-2-424, as soon as possible following the annexation;

(5) Areas annexed to municipalities should include all of the urbanized unincorporated areas contiguous to municipalities, securing to residents within the areas a voice in the selection of their government;

(6) Decisions with respect to municipal boundaries and urban development need to be made with adequate consideration of the effect of the proposed actions on adjacent areas and on the interests of other government entities, on the need for and cost of local government services and the ability to deliver the services under the proposed actions, and on factors related to population growth and density and the geography of the area; and

(7) Problems related to municipal boundaries are of concern to citizens in all parts of the state and must therefore be considered a state responsibility.

Utah Code Ann. Section 10-2-424:

Whenever the electric consumers of the area being annexed are receiving electric utility services from sources other than the annexing municipality, the municipality may not, without the consent of the electric utility, furnish its electric utility services to the electric consumers company which previously provided the services for the fair market value of those facilities dedicated to provide service to the annexed area. If the annexing municipality and the electric utility cannot agree on the fair market value, it shall be determined by the state court having jurisdiction.

Utah Const. Art. VI, Section 28:

The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

Utah Const. Art. XI, Section 5(b):

> (Cities have power) to furnish all local public services, to purchase, hire, construct, own, maintain and operate, or lease, public utilities local in extent and use; to acquire by condemnation, or otherwise, necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and within its powers regulate the exercise thereof.

Utah Const. Art. XII, Section 8:

> No law shall be passed granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city or incorporated town, without the consent of the local authorities who have control of the street or highway proposed to be occupied for such purposes.

STATEMENT OF THE CASE

1. Nature Of The Case, Course Of The Proceedings And The Disposition Below

This appeal involves efforts by Logan City to serve customers in areas which have been annexed to Logan City over the past twenty years.

Never having been able to come to terms with U.P.& L. pursuant to Utah Code Section 10-2-424, hereafter referred to as "424", the issues involved in this appeal became a part of another action commenced by Logan City to determine the right of service to Utah State University. By pre-trial statement, the issues were narrowed to resolve the questions of the right to serve customers in areas annexed within the past twenty years to Logan City and the amounts to be paid to U.P.& L. pursuant to the Utah Constitution and legislative enactment.

Although "ownership" is contended repeatedly to be an issue

in U.P.& L.'s brief, "ownership" is not an issue.

The only thing submitted to the Court for decision was the amount that had to be reimbursed to U.P.& L. for "facilities dedicated to provide service to the annexed area."

Logan showed that it could duplicate the required facilities for approximately $100,000.00. Rather than duplicate the facilities, Logan offered U.P.& L. $117,000.00 which was fair value for the local facilities. (Tr. 105)

U.P.& L. on the other hand contended that it was entitled to a pro rata share of its entire business value and that this amounted to $434,987.00. U.P.& L. demanded payment of that amount from Logan as "severance damages" and for "loss of customers" and contended that even if Logan paid that exorbitant amount for the right to serve 55 customers with gross billings of only $77,000.00 a year, Logan would acquire no ownership in any of U.P.& L.'s facilities or property. (Tr. 69)

Although U.P.& L. contends throughout its brief that its "values" were not "contested by Logan" or that Logan did not "present any contrary evidence to their values" the fact is that the values of the parties were conceded (Tr. 1-2) and this case was presented to the court on two theories:

(1) Logan's theory that only the dedicated local facilities and a pro rata amount for partially dedicated facilities were required to be reimbursed to U.P.& L. pursuant to Section 424. The amount stipulated by both parties under this theory was $117,000.00.

(2) The U.P.& L. theory that it was entitled to a pro rata percentage of its company wide facilities, including generation, franchise, and "going concern" values. U.P.& L.'s own values under this theory totaled $434,987.00.

2. Statement Of Facts

55 customers who had earlier petitioned to be annexed to Logan City to receive Logan City's services had continued to be served by U.P.& L. due to the fact that no agreement could be reached as to values pursuant to Section 424. Some of those customers had been annexed as early as 1969 and had been continuously served since then by U.P.& L. without the benefit of a Logan City franchise.

It was only after Logan City amended its franchise ordinance to impose penalties for lack of a franchise, that U.P.& L. began to negotiate seriously for the transfer of the 55 customers to Logan City. (Amended Ordinance - Appendix A)

Only two figures were represented to the Court. (1) $117,000.00 for the exclusively dedicated distribution facilities serving the annexed customers and the combined fair market value of those facilities and the proportional value of partially dedicated distribution facilities. (2) $434,987.00 which was a figure presented by U.P.& L. and stipulated to by Logan City provided U.P.& L.'s theory was correct. (Tr. 1-2) Throughout their brief, U.P.& L. constantly states that "Logan presented no evidence to rebut..." their figures. There was no reason to present any evidence because that figure was one of two

stipulated figures depending on which theory the Court adopted. (Tr. 1-2) Logan did not stipulate that it would be required to serve the customers and pay U.P.& L. the $434,987.00 if the Court adopted U.P.& L.'s theory.

SUMMARY OF ARGUMENTS

1. Section 424 was enacted to help compensate public utilities for their local facilities used to serve customers annexed to municipalities. Although the evidence shows that reasonable agreements were reached prior to 1983 when Section 424 was passed, (Tr. 32-34) the constitutional prior right of municipalities to serve customers within their city limits made it possible for municipalities to serve those customers by extending their own lines rather than utilizing existing public utility lines. Section 424 was obviously passed to provide for some compensation to the public utilities for their local lines, so that duplication could be avoided.

2. Section 424 cannot be interpreted to saddle municipalities with costs so high that it would be economically unfeasible to serve customers within the city. Since the customers make the election to be annexed for many reasons including the right to receive lower cost municipal utility services, Section 424 is unconstitutional if it requires costs so high to the City that new customers would be an unfair burden to other city rate payers.

3. Municipalities are not required to take title to the local facilities of U.P.& L. They are only required to pay for

those facilities. There is nothing to prevent a municipality from extending its own lines to serve the new customers. The customers are not tied to any long term contract with U.P.& L. (Tr. 36) When they elected to be annexed, they elected to be served by the City. The City should not be required to pay U.P.& L. severance damages and damages for loss of its customers when they have no long term contract and the County franchise does not include areas within Logan City limits.

4. If the Utah legislature had intended by Section 424 to require payment to U.P.& L. for severance damages, loss of customers, and a percentage of U.P.& L.'s entire system, it could have said so in the statute. By not saying so, it is apparent that the final draft of the statute provides only for reasonable compensation for local facilities serving the annexed area. Any other interpretation is contrary to the Utah Constitution and would effectively prevent cities from serving customers in annexed areas within their limits even though those customers were entitled to and desired city services.

ARGUMENT

I. SECTION 424 WAS ENACTED IN 1983 AND AMENDED IN 1985 OUT OF A LEGISLATIVE CONCERN FOR THE MUNICIPAL RIGHT TO SERVE CUSTOMERS WITHIN ITS BOUNDARIES.

It is apparent from the legislative history (ex. D-8) that the original sponsors of the bill enacting Section 424 (1983), were concerned about the constitutional rights of municipalities to serve customers within their limits. They were also concerned

about the right of the customers to receive services from the municipality at lower rates. In the March 9, 1983 debate, Senator Sowards said that one of the purposes of the bill was to "encourage good faith negotiations". It is also apparent from comments in the legislative history, that cities with their own municipal utility systems had for years been taking over customers in annexed areas by simply compensating Utah Power & Light for the value of the facilities taken over by agreement. There apparently have been no court cases on the question of value. (Tr. 32-34)

Another great motivation for the legislation was concern over Article XI, Section 5(b) of the Constitution of the State of Utah. Senator Jack Bangerter (Senate debate March 9, 1983) quoted this Section and emphasized that cities are to "furnish all local public services... to acquire by condemnation, or otherwise, with or without the corporate limits, property necessary for any such purpose...".

Section 424 was first enacted in 1983 ostensibly to provide for compensation to the utilities serving areas annexed to the municipality which had its own electrical service. At least one Senator could not see the reason or the need for the new section since for many years municipalities had been compensating other utilities such as Utah Power & Light for facilities they took over after annexation. Senator Snow stated in the Senate Debate March 9, 1983, "what is there in the present law that prevents the utility from being adequately and fairly compensated when

this event occurs? Now I have a letter from my city that says that they have always in the past been able to negotiate adequately with Utah Power & Light for the past 43 years whenever the city has moved."

Section 424 obviously was unsatisfactory because it was amended again two years later. As originally enacted, the Section provided that the city could not take over the customers until the county franchise had expired. It also provided that fair market value would be determined by "replacement costs less depreciation of its facilities which are dedicated to provide service to the annexed area."

In the 1985 amendment, these provisions were debated and various amendments were proposed. At one time a 25 year maximum on the existing franchise was being considered; it was then proposed that a five year payment for the value of the franchise be made and that was not passed. The 1985 amendment eliminated the tie to a county franchise and made it possible for the municipality to take over the customers immediately upon payment being made.

The statute as written undoubtedly leaves much to be desired since though it was written to avoid "litigation" it appears to have done just the opposite in view of a recalcitrant utility which is in this case, for the first time, asking for severance damages. (Tr. 33-34)

II. IF SECTION 424 IS INTERPRETED SUCH AS TO MAKE THE COST TO MUNICIPALITIES SO HIGH THAT THEY CANNOT ECONOMICALLY SERVE

CUSTOMERS WITHIN THE CITY, THEN IT IS CONTRARY TO THE UTAH CONSTITUTION.

U.P.& L. witness Colby established that the total annual revenue from the 55 customers in the annexed areas was $77,000.00. He testified that the net return on the $77,000.00 was 14% of the total revenues. (Tr. 47, 65-67) 14% of $77,000.00 is $10,780.00. If Logan City was required to pay $434,987.00 in order to take over those customers, it would never realize any net return on its investment considering the present value of money. Further, considering Logan City's lower rates, it was established that a price anywhere near that asked by Utah Power & Light would render service to the new customers economically unfeasible. (Tr. 100-101)

By getting its price so high that a municipality cannot afford to serve the annexed customers, U.P.& L. runs afoul of the Utah Constitution in that it presumably would continue serving customers within municipal limits without a franchise from the municipality. Article XI, Section 5(b) of the Utah Constitution grants to cities the authority to "furnish all local public services, to purchase, hire, construct, own, maintain or lease public utilities local and extent in use...and to grant local public utility franchises and within its powers regulate the exercise thereof."

The state statutes establishing the powers and duties of the Public Service Commission specifically provide that a regulated utility (U.P.& L.) cannot obtain a Certificate of Convenience and

Necessity to serve within any entity such as a municipality unless it first obtains a franchise from that entity. (Utah Code Section 54-4-25(3).

This court has previously held that the Utah Constitution guarantees to cities and towns the right to regulate their own utilities and that cities and towns need not obtain a Certificate of Convenience and Necessity from the Public Service Commission to enter into the business of selling electricity. Barnes vs. Lehi City, 74 Utah 321, 279 P. 878, 833 (1929); Logan City vs. Public Service Commission, 72 Utah 536, 271 P. 961, 972 (1928). These authorities establish the power of a city to operate, own, and maintain public utility facilities for the purpose of providing such services to its residents. See also Utah Code Sections 10-8-14, 20, 21.

III. SECTION 424 DOES NOT REQUIRE THAT MUNICIPALITIES TAKE TITLE TO U.P.& L.'S LOCAL FACILITIES IN ORDER TO SERVE ANNEXED CUSTOMERS.

U.P.& L's Brief makes much of their contention that the court is requiring that they sell their facilities serving the annexed customers to Logan. However, Section 424 makes no such requirement. It only requires that the city pay for the facilities so that they will not be left stranded. Mr. Bethers, Director of the Logan City Electrical Utility Department, testified that Logan could duplicate the necessary facilities to serve the 55 customers at a cost of $100,000.00. This is $17,000.00 less than the amount Logan City had agreed to pay Utah

Power & Light. (Tr. 105)

Admittedly, it would be an unnecessary and uneconomic duplication for Logan City to build its own facilities. However, Section 424 does not require that Logan City obtain ownership to U.P.& L.'s facilities; only that they be paid for as a condition of serving the customers. Certainly it would be more economical for Logan City to duplicate the facilities at a cost of $100,000.00 and pay the $117,000.00 rather than pay the $434,987.00 sought by U.P.& L. under its condemnation and severance theories.

IV. THE UTAH LEGISLATURE DID NOT INTEND SECTION 424 AS A CONDEMNATION STATUTE NOR FOR IT TO REQUIRE SEVERANCE DAMAGES.

If the Utah Legislature had intended Section 424 to require condemnation and severance damages for loss of customers, it could have said so in the statute. By not saying so, it is apparent that the final draft of the statute provides only for reasonable compensation for local facilities serving the annexed area.

From the Debates it is clear that the Legislators did not intend to either require the municipality to condemn any property nor did they intend to apply a value formula arising out of condemnation proceedings. In the February 21, 1985 Debate, Senator Barton said, "So that doesn't even speak to eminent domain, the court will decide." Senator Bangerter replied, "That's correct, that's the way I understand it too."

The following quotes from the Debates also show that the

primary interest in the minds of the draftsmen and enactors of Section 424 was equal treatment for municipal citizens. On February 21, 1985, the following comments were made: "They are supposed to treat all citizens in that annexed area the same as any other city resident, but they can't do it under the existing law and this would allow them to do it." Senator Renstrom, "... If it isn't passed, the person might well be having to pay two power bills, one through the taxing process of the city as well as having to pay the power company to provide electricity when they are already in the city."

It is obvious from the above quotes and other quotes in Logan City's Brief, that the legislative history may be used to support Logan City's position.

As to the weight such debate should be given the general law seems to be clearly stated in Sutherland, Statutory Construction, Section 48.13 where the following appears:

> "Section 48.13, Legislative Debates. Statements by individual members of the Legislature as to the meaning of provisions in a bill subsequently enacted into law, made during the general debate on the bill on the floor of each Legislative House following its presentation by a standing committee are generally held not to be admissable as aids to construing the statutes. In explanation, it has been noted that Legislative Debates are expressive of views and motives of individual members and are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body...the traditional view... has been modified to permit consideration of explanatory statements by the sponsor of a bill or by a member of the standing committee in charge of its presentation to the Legislative House...Now in addition, the Federal Courts hold statements by any of the members during Legislative Debates may be considered in the interpretation of a statute where they show a common

> agreement among the members of the Legislature as to the meaning of an ambiguous provision. Statements made by individual Legislatures during floor debates are also considered, along with information about contemporary conditions and events, when they tend to establish what problems or evils the Legislature was undertaking to remedy by the statute being construed."

From the foregoing, it is submitted that while Legislative Debates may be considered to determine the overall intent of the Legislature in passing the amendments to Section 424, no great weight should be placed on the contentions made by individual Legislators whose views were not necessarily adopted or approved by the majority of the body in passing the amendment.

That no condemnation was intended it is apparent from the fact that Senate Bill 115 was introduced but not passed at the recently completed session of the Utah Legislature. All of the arguments that U.P.& L. made to the court are made the subject of proposed amendments to Section 424 and related sections. If 424 currently provided for those damages, no amendment would be necessary. (Senate Bill 115 - Appendix B).

CONCLUSION

Logan City has not attempted to refute the greater part of U.P.& L.'s brief which is directed toward the measure of damages in condemnation. This is not a condemnation case and involves instead the prior right of municipalities to serve their own residents and the residents rights to receive municipal services. Since the choice of annexation is that of the customer, cities should not be required to pay huge severance damages to U.P.& L. Adoption of U.P.& L.'s theories (asserted for the first time in

this case) would effectively prevent Utah municipalities from serving customers in newly annexed areas. It must therefore be obvious that U.P.& L.'s theory of damages is designated primarily to keep serving the customers in annexed municipal areas regardless of the wishes of the customers; lack of a U.P.& L. municipal franchise, and the prior constitutional rights of the municipality.

It is therefore respectfully submitted that the Judgment of the District Court should be affirmed.

DATED this 6th day of March, 1989.

W. Scott Barrett
Attorney for Logan City

CERTIFICATE OF MAILING

I hereby certify that I mailed four (4) true and correct copies of the foregoing BRIEF OF RESPONDENT, postage prepaid, this 6th day of March, 1989, to the following:

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Secretary

Appendix A

Chapter 17.

Franchises.

7-17-1. Application copies, etc. Whenever application shall be made to the Municipal Council of Logan City, by any person, company or corporation for a franchise or grant of special privileges, or for a renewal or extension of any existing franchise or grant of special privilege, the said person, persons, company or corporation shall furnish the said Municipal Council with five (5) copies of the proposed resolution or ordinance and pay into the city treasury of said city the sum of $100.

7-17-2. Non-assignable. All franchises and grants of special privileges shall be deemed to be non-assignable without the express permission of the Municipal Council, whether such limitation is set forth in the body of the franchise or grant or not.

7-17-3. Manner of assignment. All assignment of franchises and special grants must be in writing and a copy thereof filed in the office of the City Recorder, and the Municipal Council must expressly consent thereto, before any such assignment or transfer will be recognized by Logan City.

7-17-4. Forfeiture. Any attempted assignment or transfer of a franchise or special privilege not made in accordance with the provisions of this chapter shall operate as a forfeiture of all rights of the grantee therein given.

7-17-5. Public Services. No person or corporation may provide public services within the limits of Logan City without a franchise. Public services include the supplying of water, gas, electric power, light, communication and transportation services, commonly known as public services or public utilities. Any person, company or corporation violating this section shall be guilty of a Class B misdemeanor, punishable by imprisonment not to exceed six (6) months or by a fine not to exceed $1,000 in case of a person and not to exceed limitations set by state law in case of a corporation. Any person or corporation who shall violate any of the provisions of this section shall be guilty of a separate offense for each day or portion thereof during which the offense is committed, continued or permitted. This section may be enforced at Logan City's option by a civil action in the appropriate court for collection of the maximum fine as a civil penalty. This section supersedes any other penalty provision in this title and applies only to the providing of franchise-type services without a franchise from Logan City.

(SEC. 7-17-5 ADDED 11/19/87)

Appendix B

02-06-89 10:35 a.m.

(UTILITY SYSTEMS - ANNEXATION,

ACQUISITION AND EVALUATION

1989

GENERAL SESSION

S.B. No 115 By_____

_____

AN ACT RELATING TO ANNEXATION; DEFINING REQUIREMENTS FOR ANNEXATION, AND EVALUATION OF UTILITY SYSTEMS BY MUNICIPALITIES; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

10-2-401 UTAH CODE ANNOTATED 1953

10-2-417, AS LAST AMENDED BY CHAPTER 247, LAWS OF UTAH 1983

ENACTS:

10-2-417(4) UTAH CODE ANNOTATED 1953

10-2-425, UTAH CODE ANNOTATED 1953

REPEALS:

10-2-424, AS LAST AMENDED BY CHAPTER 138, LAWS OF UTAH 1985

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 10-2-401, as last amended by Chapter 247, Laws of Utah, 1953, is amended to read:

10-2-401. The legislature hereby declares that it is legislative policy that:

(1) sound urban development is essential to the continued economic development of this state;

(2) municipalities are created to provide urban governmental services essential for sound urban development and for the protection of public health, safety, and welfare in residential, commercial and industrial area, and in areas undergoing development;

(3) municipal boundaries should be extended, in accordance with specific standards, to include areas where a high quality of urban governmental services is needed and can be provided for the protection of public health, safety, and welfare and to avoid the inequities of double taxation and the proliferation of special service districts;

(4) areas annexed to municipalities in accordance with appropriate standards should receive the services provided by the annexing municipality (/ØÆÞJÆÇÆ/ÆÞ/ÆÆÇÆÆÇØÆ/ÆØÆ2Æ+Æ4Æ4/) as soon as possible following the annexation;

(5) areas annexed to municipalities should include all of the urbanized unincorporated areas contiguous to municipalities,

securing to residents within the areas a voice in the selection of their government;

(6) decisions with respect to municipal boundaries and urban development need to be made with adequate consideration of the effect of the proposed actions on adjacent areas and on the interests of other government entities, on the need for and cost of local government services and the ability to deliver the services under the proposed actions, and on factors related to population growth and density and the geography of the area; and

(7) problems related to municipal boundaries are of concern to citizens in all parts of the state and (~~must/then/be considered~~) are a state responsibility.

Section 2. Section 10-2-417(4), Utah Code Annotated 1953, is enacted to read:

10-2-417(4). Municipalities may not annex territory for the sole or primary purpose of serving electric loads when such loads are already being adequately provided by sources other than the annexing municipality.

Section 3. Section 10-2-425, Utah Code Annotated 1953, is enacted to read:

10-2-425. (1) Whenever the electric consumers within any area are receiving electric utility services from sources other than a municipality or other supplier proposing to serve their

electric requirements, the municipality or other supplier may not, without the consent of the present supplier, furnish its electric utility services to the electric consumers until all of the following conditions have been met:

(a) The franchise, if electric service is being furnished under a franchise, has expired. Except that this paragraph (a) shall not apply to an annexation by a municipality of areas contiguous to its boundaries.

(b) The municipality or other supplier has reimbursed the electric supplier that previously provided electric utility services for:

(i) the replacement cost less depreciation as determined by the lowest of three qualified bids of its low voltage distribution facilities which provide service in the area; and

(ii) any loss sustained by the present electric supplier and any association or political subdivision to which the supplier belongs due to its stranded costs and return on investment for facilities used in providing electric service to the area, including its last allowed or approved return on investment in electric transmission power lines, generating plants, and costs of electric energy acquired under any contract requiring future payments for that energy, whether used or not, calculated as of December 31 of each year said investment or any

part thereof remains stranded but said calculation and payment shall not continue under any circumstance for a period longer than 5 years from the date the municipality begins service to those customers.

(c) If the new and previous electric supplier cannot agree on the fair market value and stranded costs and investment values, the state court having jurisdiction shall determine those values.

Section 4. Section 10-2-424, as last amended by Chapter 138, Laws of Utah 1985, is repealed.